



**COMMONWEALTH of VIRGINIA**  
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**MEMORANDUM**

**TO:** L. RICHARD MARTIN, JR.  
Virginia Department of Social Services

**FROM:** ALLEN T. WILSON  
Assistant Attorney General

**DATE:** September 30, 2003

**SUBJECT:** Final Regulation 22 VAC 40-191-10 et seq.  
Background Checks for Child Welfare Agencies

I have reviewed the above-referenced final regulation to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services ("State Board") to promulgate the final regulation and if the final regulation comports with applicable state law.

As noted in my memoranda dated February 18, 2003, it is this Office's view that the State Board has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002), and has not exceeded that authority.

It appears that the several changes to the final regulation are not changes with "substantial impact," which would necessitate an additional comment period. The changes are technical in nature to correct typographical errors.

It appears that the several changes made in response to public comment are changes with "substantial impact," and could necessitate an additional comment period. Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DSS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Va. Code § 2.2-4007(J) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please feel free to call me at 225-3219.